

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ORIGINAL

In the Matter of )  
)  
Implementation of the Non-Accounting )  
Safeguards of Sections 271 and 272 of the )  
Communications Act of 1934, as amended; )  
)  
and )  
)  
Regulatory Treatment of LEC Provision )  
of Interexchange Services Originating in the )  
LEC's Local Exchange Area )

CC Docket No. 96-149

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REPLY COMMENTS OF THE  
NATIONAL CABLE TELEVISION ASSOCIATION, INC.

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REPLY COMMENTS OF THE  
NATIONAL CABLE TELEVISION ASSOCIATION, INC.

The National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby submits these reply comments in the above-captioned proceeding.<sup>1/</sup>

INTRODUCTION AND SUMMARY

NCTA's initial comments demonstrated that section 271(h) of the Communications Act gives the Commission clear authority to promulgate consumer and competitive safeguards applicable to the provision of incidental interLATA services by the Bell operating companies ("BOCs"). Numerous comments support this conclusion, and no BOC or telephone company adduces any compelling evidence to the contrary. NCTA urges the Commission to use its authority under section 271(h) to impose limitations on the BOCs' inbound and outbound telemarketing of video services to prevent the BOCs from using their

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<sup>1/</sup> Notice of Proposed Rulemaking, FCC 96-308 (rel. July 18, 1996) ("Notice").

long-standing relationships with basic telephone subscribers to gain an unfair competitive advantage over video competitors.

The initial comments of other parties also confirm NCTA's request that the Commission prohibit the BOCs from providing local exchange services and in-region interLATA services through the same affiliate, in order to preclude the BOCs from making an end-run around section 272's separate affiliate requirements. The Telecommunications Act of 1996 ("1996 Act") permits the BOCs to jointly market local exchange and interLATA services, but also mandates that the BOCs provide interLATA service through an affiliate separate from the entity that provides local exchange service. Combining the provision of these services in the same entity, as proposed by various BOCs, would exceed the joint marketing authority granted under the 1996 Act, violate the Act's structural separations requirements, and undermine the Act's pro-competitive objectives.

**I. THE 1996 ACT GIVES THE COMMISSION CLEAR AUTHORITY TO IMPOSE RESTRICTIONS ON BOC MARKETING OF INCIDENTAL INTERLATA SERVICE**

Despite the unequivocal statutory mandate that the Commission ensure that the provision of incidental interLATA services does not adversely affect telephone exchange ratepayers or harm competition in any telecommunications market,<sup>2/</sup> certain BOCs and other telephone company commenters argue that the Commission cannot or should not impose safeguards governing BOC provision of these incidental services.<sup>3/</sup> Contrary to their

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<sup>2/</sup> 47 U.S.C. § 271(h).

<sup>3/</sup> See Pacific Telesis Group Comments at 6-7 ("PacTel Comments"); and US West, Inc. Comments at 18-19 (US West Comments"); see also United States Telephone Association Comments at 10-11 ("USTA Comments").

arguments, the exemption of incidental interLATA services from the separate affiliate requirement of section 272(a) does not insulate the BOCs from any safeguards that the Commission may find reasonable and necessary to protect captive ratepayers and promote competition in the markets for incidental services. Such an expansive reading of section 272(a) -- advanced without support by the telephone company commenters -- would vitiate the explicit statutory directive to the Commission in section 271(h) to safeguard competition in the affected markets.<sup>4/</sup> Section 272(a) must be read in conjunction with section 271(h), giving the Commission the authority and the responsibility to devise safeguards applicable to the BOCs' provision of incidental interLATA services.<sup>5/</sup>

As they enter the video marketplace, the BOCs are well-positioned to harm competition by exploiting established customer relationships through the joint marketing of basic exchange service and video services.<sup>6/</sup> In order to safeguard video competition, the Commission should use its authority under section 271(h) to restrict the BOCs' ability to jointly market local exchange services and video services as NCTA proposed in its initial comments.<sup>7/</sup>

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<sup>4/</sup> National Cable Television Association Comments at 2-4 ("NCTA Comments").

<sup>5/</sup> NCTA Comments at 3-5; Competitive Telecommunications Association Comments at 9-11 ("Comptel Comments"); AT&T Corp. Comments at 10-12 ("AT&T Comments"); MCI Telecommunications Corporation Comments at 9-14 ("MCI Comments").

<sup>6/</sup> NCTA Comments at 5-6.

<sup>7/</sup> Id. at pp. 4-6.

**II. THE 1996 ACT PROHIBITS THE PROVISION OF BOTH LOCAL EXCHANGE SERVICES AND INTERLATA SERVICES BY THE SAME BOC AFFILIATE**

As even some BOCs acknowledge, section 272's structural requirements are designed to prohibit the integrated provision of local exchange and interexchange services by a BOC or its affiliate.<sup>8/</sup> A BOC's provision of in-region interLATA services must be structurally separated from its provision of local exchange service.<sup>9/</sup> Section 272(g) provides an exception to this rule for limited joint marketing, not joint provision, of services.<sup>10/</sup>

Notwithstanding the BOCs' assertions to the contrary, the structural separations requirements under section 272 were intended to decouple local exchange and interexchange services during the three year separation period established under the 1996 Act.<sup>11/</sup> Although the BOCs are correct that permitting an affiliate to offer both local exchange and interexchange services would provide "one stop" shopping advantages for a customer, Congress's intent was that one stop shopping be accomplished through joint marketing in strict compliance with the procedures set out in sections 271 and 272, not by manipulation of the separate affiliate requirement.<sup>12/</sup>

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<sup>8/</sup> See, e.g., SBC Communications Inc. Comments at 4 ("SBC Comments"); see also NCTA Comments at 7-12; AT&T Comments at 18; Teleport Communications Group Comments at 18-21 ("TCG Comments"); Comptel Comments at 21-22.

<sup>9/</sup> SBC Comments at 6.

<sup>10/</sup> 47 U.S.C. § 272(g).

<sup>11/</sup> See NCTA Comments at 10, n. 30; see also Comptel Comments at 21-22; AT&T Comments at 21.

<sup>12/</sup> See NCTA Comments at 7, n. 20.

Congress required the separation of local and interLATA services in order to deter improper cross-subsidization of the BOCs' competitive services with revenues from monopoly services and unfair discrimination by the BOCs against their competitors.<sup>13/</sup> The integration of local exchange and interexchange services by a BOC on an unseparated basis offers the BOC the opportunity to engage in cost misallocation and cross-subsidization without the possibility of detection.<sup>14/</sup> Likewise, if a BOC is permitted to combine the provision of local exchange services and interexchange services in one affiliate, but the BOC performs marketing, sales, and order processing functions for the affiliate, then the BOC could incur all of the expenses while the affiliate garners all of the revenue.<sup>15/</sup> Such a result would contravene the carefully structured regime established by the 1996 Act.

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NYNEX goes so far as to suggest that a BOC affiliate offering both local exchange and interexchange services could use the BOC's sales channels as an agent to sell the new packaged service. NYNEX Comments at 16-17. As a sales agent for its affiliate, the BOC would "solicit and process end user customer sales orders for its affiliate's services, and/or would make customer referrals . . . to its affiliate . . . . The BOC would be free to promote and advertise its agency relationship with its affiliate, and thus to advertise under a single brand name the 'one stop shopping' opportunity for customers of the BOC and of the BOC's affiliate." Id. Such a plan impermissibly blurs the distinctions between interLATA and interexchange services that Congress sought to establish through its imposition of structural separation requirements, and would facilitate the very cross-subsidization and unfair competitive practices that those requirements were intended to preclude. See NCTA Comments at 8, n. 21; and TCG Comments at 18-20.

<sup>13/</sup> Notice at ¶¶ 12-13.

<sup>14/</sup> See AT&T Comments at 18-21.

<sup>15/</sup> See note 12, supra; see also TCG Comments at 5, n. 5 (citing statements by the Vice President of Finance of Ameritech's local exchange and intraLATA toll services subsidiary, Ameritech Communications, Inc. ("ACI"), as stating that in Michigan alone Ameritech will absorb a minimum of \$90 million of ACI's expenses).

As NCTA suggested in its initial comments, and as the BOCs' own comments illustrate, failure to vigorously enforce the separation requirements of section 272 will thwart the pro-competitive purposes of the 1996 Act. For instance, a BOC may attempt to argue that its new local/interLATA affiliate is a competitive local exchange carrier not subject to section 251(c)<sup>16/</sup> and that any advanced local network capabilities provided by the affiliate are thus shielded from the interconnection and access obligations imposed on incumbent local exchange carriers ("ILEC") by the Act. Such a result would be fundamentally at odds with the requirements and pro-competitive objectives of the 1996 Act.<sup>17/</sup>

Permitting a BOC to establish an affiliate that could offer local exchange service as a CLEC would also cause substantial customer confusion, undermining the potential for competition from CLECs unaffiliated with the BOC. It could also provide an avenue for the BOC to obtain regulatory relief at the State level that would otherwise be unavailable to the BOC, given its ILEC status. Using such a stratagem to obtain premature relief from regulatory oversight while they continue to enjoy the market power of ILECs, the BOCs could significantly undermine competition through cost misallocation and predatory pricing.<sup>18/</sup> To prevent such results, which are contrary to the competitive goals of the 1996 Act, the Commission should ensure that the BOCs cannot circumvent the separation requirements of section 272.

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<sup>16/</sup> See, e.g., US West Comments at 53-54; Ameritech Comments at 56-60, and n. 68.

<sup>17/</sup> AT&T Comments at 21-22.

<sup>18/</sup> See MCI Comments at 35-36; Comptel Comments at 34-38.

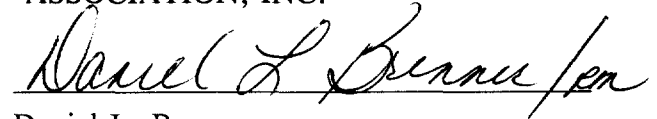


## CONCLUSION

For the foregoing reasons, the Commission should impose limitations on the BOCs' joint marketing of video and telephone services. Consistent with the statutory framework and the overarching objectives of the 1996 Act, the Commission should also prohibit the BOCs from creating affiliates that provide both local exchange and interLATA services.

Respectfully submitted,

THE NATIONAL CABLE TELEVISION  
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A handwritten signature in cursive script, appearing to read "Daniel L. Brenner", is written over a horizontal line.

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